

CITY OF NEWTON

IN BOARD OF ALDERMEN

ZONING & PLANNING COMMITTEE AGENDA

MONDAY, SEPTEMBER 24, 2007

7:45 pm  
Aldermanic Chamber

***PUBLIC HEARINGS WILL BE HELD ON THE FOLLOWING ITEMS:***

#333-97(2) ALD. YATES proposing that Chapter 30 be amended to prohibit without a special permit in any zoning district the approval of a subdivision that would be accessed by any public way on which the Level of Service at the point of access is already a D, E, or F, for at least one hour per week or if the additional traffic to be generated by the subdivisions would cause the Level of Service at the point of access to a public way to fall to D, E, or F for at least one hour per week.

#66-07(2) DIRECTOR OF PLANNING AND DEVELOPMENT proposing to amend Section 30-15 by adding a new subsection entitled **Planned Multi-Use Business Development (PMBD)** which will allow the Board of Aldermen to grant a special permit for a mix of compatible and complementary commercial and residential uses on large tracts of land in any Business 4 District, subject to certain minimum criteria for PMBDs and additional special permit criteria relative to adequacy of public facilities; mitigation of neighborhood impacts; housing, public transportation and traffic and parking improvements, and utility infrastructure enhancements; compatibility and integration with its surroundings; not inconsistent with applicable local plans or general laws; improved access nearby; enhanced open space; excellence in place-making; and a comprehensive signage program.

**Proposed Planned Multi Use Business Development Ordinance**

***1. The following Section 30-15(s) is added:***

Section 30-15(s) *Planned Multi-Use Business Development ("PMBD")*. In any Business 4 District, the Board of Aldermen may give site plan approval in accordance with the procedures provided in Section 30-23, and may grant a special permit in accordance with the procedures provided in Section 30-24, for the applicable density and dimensional controls set out in Table A of this subsection for a Planned Multi-Use Business Development and the associated conditions set out below.

- 1) *Purpose:* A Planned Multi-Use Business Development is one which allows development appropriate to the site and its surroundings that provides enhancements to infrastructure, protection of nearby neighborhoods, and a mix of compatible and complementary commercial and residential uses appropriate for sites located on

commercial corridors, and is not inconsistent with the City's Comprehensive Plan in effect at the time of filing an application for a Planned Multi-Use Business Development.

- 2) *Minimum Criteria for Planned Multi-Use Business Developments.* In order to be eligible for any approval under this Section, a PMBD must meet the following threshold criteria:
  - (a) The Development Parcel shall be located in a Business 4 District;
  - (b) The PMBD shall comply with the applicable minimum and maximum density and dimensional controls set out in Table A of this subsection;
  - (c) The PMBD shall include a mix of compatible and complementary commercial and residential uses and shall comply with the provisions set forth in Section 30-24(f); and
  - (d) If the PMDB's mix of commercial and residential uses share parking facilities, the provisions of Section 30-19(d) shall apply, provided that in no event shall the required parking for residential units be less than 1.25 per dwelling unit.
  
- 3) *Additional Special Permit Criteria for a Planned Multi-Use Business Development.* In addition to those criteria set forth in Section 30-23(c)(2) and in Section 30-24(d), the Board of Aldermen shall consider the application for a Planned Multi-Use Business Development in light of the following criteria:
  - (a) *Adequacy of public facilities.* Transportation, utilities, public safety, schools including capacity, and other public facilities and infrastructure serve the PMBD appropriately and safely without material deterioration in service to other nearby locations;
  - (b) *Mitigation of neighborhood impacts.* Mitigation measures have been included to address any material adverse impacts from the PMBD on nearby neighborhoods during construction and, after construction, on traffic, parking, noise, lighting, blocked views, and other impacts associated with the PMBD;
  - (c) *Housing, public transportation and traffic and parking improvements, and utility infrastructure enhancements.* The PMBD offers long term public benefits to the City and nearby neighborhoods such as affordable housing, substantial parking, public safety, traffic and roadway enhancements, improved access and enhancements to public transportation, and water and sewer infrastructure enhancements;
  - (d) *Compatibility and integration with its surroundings.* The PMBD scale, density, and mix of commercial and residential uses have been designed to be compatible with the character and land uses in the surrounding neighborhoods, and the PMBD appropriately integrates building height, streetscape character, and overall PMBD design, as well as provides appropriate setbacks and buffering and screening from nearby properties,

- especially residential ones, as well as assurance of appropriate street or ground level commercial uses;
- (e) *Not inconsistent with applicable local plans or general laws.* The PMBD is not inconsistent with the City's Comprehensive Plan in effect at the time of filing an application for a Planned Multi-Use Business Development, and applicable general laws relating to zoning and land use;
  - (f) *Improved access nearby.* Pedestrian and vehicular access routes and driveway widths, which shall be determined by the Board of Aldermen, are appropriately designed between the PMBD and abutting parcels and streets, with consideration to streetscape continuity and an intent to avoid adverse impacts on nearby neighborhoods from such traffic and other activities generated by the PMBD as well as to improve traffic and access in nearby neighborhoods;
  - (g) *Enhanced open space.* Appropriate setbacks as well as buffering and screening are provided from nearby residential properties; the quality and access of beneficial open space and on-site recreation opportunities is appropriate for the number of residents, employees and customers of the PMBD; and the extent of the conservation of natural features on-site, if any;
  - (h) *Excellence in place-making.* The PMBD provides a design of exceptional architectural quality so as to enhance the visual quality of the site in comparison both to its current uses as well as its surroundings; and
  - (i) *Comprehensive signage program.* All signage for a PMBD shall be in accordance with a comprehensive signage program developed by the applicant and approved by the Board of Aldermen, which shall control for all purposes and shall not be inconsistent with the architectural quality of the PMBD or character of the streetscape.
- 4) *Lots.* In the application of the requirements of this Ordinance to a Planned Multi-Use Business Development, the same shall not be applied to the individual lots or ownership units comprising a Development Parcel, but shall be applied as if the Development Parcel were a single conforming lot, whether or not the Development Parcel is in single- or multiple-ownership; provided, however, that violation of this Ordinance by an owner or occupant of a single lot or ownership unit or leased premises within a PMBD shall not be deemed to be a violation by any other owner or occupant within the PMBD provided there exists an appropriate organization of owners as described in subsection 5) below.
- 5) *Organization of Owners.* Prior to exercise of a special permit granted under this section, there shall be formed an organization of all owners of land within the development with the authority and obligation to act on their behalf in contact with the city or its representatives. Such organization shall serve as the liaison between the city and any lot owner, lessee, or licensee within the PMBD which may be in violation of the city's zoning ordinance, shall be the primary contact for the city in connection with any dispute regarding violations of this ordinance and, in addition to

- any joint and several liability of individual owners, shall have legal responsibility for the PMBD's compliance with the terms of its special permit and site plan approval granted hereunder and with this ordinance. In addition, the special permit shall provide for the establishment of an advisory council consisting of representatives of the neighborhoods and this organization to assure continued compatibility of the uses within the PMBD and its neighbors during and after construction.
- 6) *Phasing.* Any Planned Multi-Use Business Development may be built in multiple phases over a period of time, in accordance with the terms of the special permit granted provided that all improvements and enhancements to public roadways and other amenities are provided contemporaneously with or in advance of such initial construction. The phasing schedule for the PMBD shall be as set forth in the special permit.
- 7) *Post-Construction Traffic Study.* A Planned Multi-Use Business Development special permit granted shall provide for an analysis of:
- (a) Trips generated by the PMBD site, measured at site driveways, prior to the construction of the PMBD;
  - (b) Trips projected by a professional traffic engineering firm to be generated by and distributed to the PMBD site by the PMBD; and
  - (c) Trips actually generated by and distributed to the PMBD one year after a final certificate of occupancy is granted, with limitation to impacts caused by the PMBD, as measured through an independent trip generation and distribution analysis, to be paid for by the applicant or successor in interest but conducted or overseen by the City.

To the extent that (c) exceeds (b) by ten per cent, as measured on a periodic basis over the course of a calendar year, the then owner of the Planned Multi-Use Business Development site shall begin mitigation measures within six months, satisfactory to the director of planning and development and the city traffic engineer, to *reduce* the trip generation variance and the trip distribution variance on roadways as specified by the director of planning and development and the city traffic engineer to a level within ten percent of (b) within twelve months after the mitigation is begun. The city's remedy for failure to achieve such a reduction within one year after the analysis described in (c) is completed shall require forfeit of a bond or other security mechanism in an amount to be determined by the board of aldermen and included as a condition of the special permit, which funds shall be used for traffic mitigation in nearby neighborhoods by the city.

- 8) *Modifications.* Any material modification to a PMBD shall require Site Plan Approval by the board of aldermen in accordance with Section 30-23. The following shall be considered material modifications:
- (a) A change of use to a use not approved in the special permit; or change to an approved use within the PMBD if the total Gross Floor Area within the

PMBD devoted to such use would be increased by more than five percent (5%) in the aggregate;

- (b) A change of use that results in a net increase in required parking for the PMBD (pursuant to Section 30-19);
  - (c) A change of use or an increase in the floor area or unit count, as applicable, of a use within the PMBD unless the applicant demonstrates that the total traffic generation of the PMBD, with the proposed change, will not exceed the total traffic generation of the PMBD set forth in the applicant's pre-development traffic study;
  - (d) Except as provided above, any reduction in beneficial open space; and
  - (e) Modification governed by any condition identified by the board of alderman in the special permit as not subject to modification without additional approval.
- 9) *Applicability.* Buildings, structures, lots and uses within or associated with a PMBD shall be governed by the applicable regulations for the Business 4 District, except as modified by the provisions of this section 30-15(s). Where provisions of this Ordinance conflict or are inconsistent with the provisions of this section 30-15(s), the provisions of this section 30-15(s) shall govern.
- 10) *Additional Filing Requirements for PMBDs.* In addition to the provisions of Section 30-23 and 30-24, general application requirements for grant of a special permit for a PMBD are as follows: Applicants must submit in hard copy and by electronic submission (e-filing), unless the applicant demonstrates to the satisfaction of the director of planning and development that electronic submission is not feasible:
- (a) Scaled massing model or 3D computer model;
  - (b) Narrative analysis describing design features intended to integrate the proposed PMBD into the surrounding neighborhood, including the existing landscape, abutting commercial and residential character and other site specific considerations, as well as an explanation of how the proposed PMBD satisfies each criterion in this section;
  - (c) Statement describing how the beneficial open space areas, to the extent open to the public, are intended to be used by the public;
  - (d) Site plans showing any "by-right" or special permit alternatives within the current zoning district prior to any site specific rezoning or special permit hereunder; and
  - (e) Area plan showing distances from proposed buildings or structures on abutting parcels or parcels across public ways, along with information on the heights and number of stories of these buildings and any buildings used for the purposes calculating of a height bonus.

**2. Section 30-1 is amended by adding the following three definitions:**

*Open Space, Beneficial:* Areas not covered by buildings or structures, which shall specifically include, but are not limited to: landscaped areas; playgrounds; walkways; plazas, patios, terraces and other hardscaped areas; and recreational areas, and shall not include: (i) portions of walkways intended primarily for circulation, i.e., that do not incorporate landscape features, sculpture or artwork, public benches, bicycle racks, kiosks or other public amenities, or (ii) surface parking facilities, or (iii) areas that are accessory to a single housing unit or (iv) areas that are accessory to a single commercial unit, and controlled by the tenant thereof, and not made available to the general public. In calculations of the amount of beneficial open space provided, an offset of ten (10) per cent of the otherwise applicable square footage requirements shall be made for the provision of well-maintained publicly available green planted areas.

*Development Parcel:* The real property on which a Planned Multi-Use Business Development is located, as shown on a Planned Multi-Use Business Development Plan approved by the board of aldermen in connection with a special permit under Section 30-15(s).

*Height, Contextual:* The vertical distance between the elevations of the following: (a) the Newton Base Elevation utilized by the city as implemented by the engineering division of the department of public works and (b) the mid-point between the highest point of the ridge of the roof and the line formed by the intersection of the wall plane and the roof plane. Not included in such measurements are 1) cornices which do not extend more than five (5) feet above the roof line; 2) chimneys, vents, ventilators and enclosures for machinery of elevators which do not exceed fifteen (15) feet in height above the roof line; 3) enclosures for tanks which do not exceed twenty (20) feet in height above the roof line and do not exceed in aggregate area ten (10) per cent of the area of the roof; and 4) towers, spires, domes and other ornamental features.

**3. Section 30-11(d) is amended by renumbering subparagraph (12) as (13) and adding the following as new subparagraph (12): “In Business District 4, a Planned Multi-Use Business Development;”**

**Section 30-11(i) is amended by renumbering subparagraph (7) as (8) and adding the following as new subparagraph (7): “A Planned Multi-Use Business Development;”**

**Table A**

**Density and Dimensional Requirements for Planned Business Developments Pursuant to Section 30-15(s)**

<b>Zoning District</b>	<b>Min. Lot Area</b>	<b>Min. Frontage</b>	<b>Max. # of Stories (1)</b>	<b>Max. Total Floor Area Ratio</b>	<b>Min. Lot Area per Res. Unit</b>	<b>Max. Lot Coverage</b>	<b>Min. Beneficial Open Space</b>
<i>Business 4</i>	10 acres	100 ft.	8	3.0	1,200 sq. ft.	n/a	20%

**Notes:**

(1) Number of stories may be increased up to a maximum of 14 stories, subject to grant of special permit by the Board of Aldermen and subject to such height and setback limits as established in Footnotes 2 and 3, following.

**Notes:**

(2) The Board of Aldermen may grant a special permit to allow building height to be increased up to a maximum of 168 feet, excluding customary rooftop elements, provided the building is placed a minimum of 100 feet from the front and rear lot lines and provided the excess height of any such building does not exceed the following: one (1) foot of excess building height for each 1.5 feet of additional setback, as measured from the front or rear lot line, whichever is less.

(3) Any increase in building height requested pursuant to Fn. 2 may not result in the proposed building at any point exceeding the contextual height of the tallest building located within 2,000 feet of the Development Parcel.

(4) The Board of Aldermen may grant a special permit to allow the front setback to be decreased from 15 feet to the average setback in the immediate area, which shall be the average of the setbacks of the buildings nearest thereto on either side of the Development Parcel. A vacant lot shall be counted as though occupied by a building set back fifteen feet from the front setback.

(5) Side and/or rear setbacks shall be a minimum of 20 feet when such setback abuts any Single Residence District or Multi-Residence District or Public Use District.

(6) Side and/or rear setbacks of non-residential uses shall be a minimum of 100 feet when such setback abuts any Single Residence District or Multi-Residence District or Public Use District.



(7) The front, side and rear setback requirements for any parking facility shall not be less than five feet, or shall not be not be less than fifteen feet when such setback abuts any Single Residence District or Multi-Residence District or Public Use District.

(8) Building height and setbacks shall be measured separately for each building on the site and shall be measured separately for each part of a building which (a) is an architecturally distinctive element, and (b) is setback from the façade of an adjoining or lower building element at least 20 feet, and c) for which there is a change in height of at least one story. Setbacks for all other structures shall be determined by the Board of Aldermen.

**PMBD ZONING**  
VERSION OF JUNE 29, 2007

